

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHAKLA JOSEPH,

Plaintiff,

v.

J. S. WOODFORD, et al.,

Defendants.

CASE NO. 1:05-cv-00184-LJO-SMS PC

ORDER DENYING PLAINTIFF'S MOTION
FOR EXTENSION OF UNENUMERATED
12(B) MOTION DEADLINE

(Doc. 37)

ORDER REQUIRING PLAINTIFF TO FILE A
RESPONSE TO DEFENDANTS' MOTION TO
DISMISS WITHIN THIRTY DAYS

(Doc. 35)

Plaintiff Shakla Joseph ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 2000cc-1 (Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA")). On August 24, 2007, defendants filed a motion to dismiss for failure to exhaust, pursuant to the unenumerated portion of Federal Rule of Civil Procedure 12(b). Plaintiff did not file a timely opposition. Local Rule 78-230(m). However, on September 13, 2007, plaintiff filed a motion seeking an extension of the deadline to file unenumerated Rule 12(b) motions, which was September 14, 2007.

An unenumerated Rule 12(b) motion is a motion to dismiss for failure to exhaust the available administrative remedies at a prison. The failure to exhaust is an affirmative defense raised by defendants to an action. An unenumerated Rule 12(b) motion is not a motion that plaintiff would file, as it would make no sense for plaintiff to move to dismiss his own action under Rule 12 for

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1 failure to exhaust. For this reason, plaintiff's motion for an extension of the unenumerated Rule
2 12(b) motion deadline shall be denied.

3 Plaintiff shall be provided with thirty additional days within which to file a response to
4 defendants' motion to dismiss. If plaintiff fails to file a response, this action will be dismissed, with
5 prejudice, for failure to obey a court order and failure to prosecute.

6 As set forth herein, it is HEREBY ORDERED that:

- 7 1. Plaintiff's motion for an extension of the unenumerated Rule 12(b) motion deadline,
8 filed September 13, 2007, is DENIED;
- 9 2. Within **thirty (30) days** from the date of service of this order, plaintiff shall file a
10 response to defendants' motion to dismiss; and
- 11 3. If plaintiff fails to file a response to defendants' motion to dismiss in compliance
12 with this order, this action will be dismissed, with prejudice, for failure to obey a
13 court order and failure to prosecute.

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15 IT IS SO ORDERED.

16 **Dated: October 3, 2007**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE